



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,209	11/01/2001	Charles C. Huse	NLM.P005	5816

30554 7590 02/07/2005

SHEMWELL GREGORY & COURTNEY LLP
4880 STEVENS CREEK BOULEVARD
SUITE 201
SAN JOSE, CA 95129

EXAMINER

TRIMMINGS, JOHN P

ART UNIT PAPER NUMBER

2133

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/004,209	Applicant(s) HUSE, CHARLES C.	
	Examiner John P Trimmings	Art Unit 2133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 28-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the applicant's Amendment and Declaration under 37 CFR 1.131 dated 10/22/2004.

Claim 27 was canceled by the applicant.

Claims 35-38 were amended by the applicant.

Claims 1-26 and 28-43 are pending.

Response to Amendment

1. The examiner acknowledges receipt of changes to FIG.11 of the Drawings, and to the Specification, approves said changes, and withdraws the objections to said Drawing and Specification.
2. The examiner notes the following informalities:

In re: last paragraph of page 15 of applicant's amendment; the date, August 3 2001, is the effective date of Ichiriu, and not that of Application No. 10/004,209.
3. The Declaration of Prior Invention filed on 10/22/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ichiriu and Miyatake references.
 - a. The evidence submitted is insufficient to establish diligence from a date prior to the date of the Ichiriu reference (8/3/2001) to either a constructive reduction to practice or an actual reduction to practice. Paragraph 4 of the Declaration lacks a definite and factual basis for diligence in reducing the invention to practice prior to the effective date of the reference. The statement appears to be a hearsay statement by the applicant, containing indefiniteness in

regard to said diligence. Also, the statement establishes a diligence date of "just prior to" 11/1/2001, which post-dates the references of both Ichirie and Miyatake.

b. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Ichiriu reference (8/3/2001). As per Mr. Cortes affidavit, reduction to practice occurred on 8/21/2001, which was the date of receipt of the applicant's draft.

Accordingly, the facts lead the examiner to find due diligence beginning on 8/21/2002 (see Cortes). Therefore, there is a lack of due diligence in the gap of time between at least prior to 6/19/2002 (the effective date of Miyatake) and 8/21/2002 (the date of receipt by Mr. Cortes).

Since the applicant has relied solely on the Declaration of Prior Invention, and in view of the ineffectiveness in overcoming Ichiriu and Miyatake in said Declaration, the examiner's rejections of Claims 1-26 and 28-43 under 35 USC 103(e) and 103(a) are maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 2133


mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P Trimmings whose telephone number is (703) 272-3830. The examiner can normally be reached on Monday through Thursday, 7:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert DeCady can be reached on (703) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jpt


John P Trimmings
Examiner
Art Unit 2133


Guy J. Lamarre
Primary Examiner